

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ROBERT CHAPPELL,

Petitioner,

3:06-cv-0704-LRH-RAM

vs.

ORDER

E.K. McDANIEL, *et al.*,

Respondents.

_____ /

This action is a petition for a writ of habeas corpus by Robert Chappell, a Nevada prisoner. Respondents have filed a motion to dismiss (docket #7), asserting that this is a successive petition, and that petitioner has not obtained permission from the Ninth Circuit Court of Appeals, as required by statute, to file the successive petition. Petitioner did not respond to the motion to dismiss. The Court will grant the motion to dismiss, and dismiss this action.

In their motion, respondents show that petitioner previously filed, in this Court, a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, in Case No. CV-N-00-437-ECR, to challenge his conviction and sentence in Case No. CR96-2580 in the Second Judicial District Court of the State of Nevada. Exhibit 1 in Support of Motion to Dismiss (docket #8). The Court takes judicial notice of the proceedings in Case No. CV-N-00-437-ECR.

1 In Case No. CV-N-00-437-ECR, on September 24, 2003, the Court denied
2 petitioner's habeas petition on its merits, and judgment was entered. Exhibit 2 in Support of Motion
3 to Dismiss (docket #8); Docket #53 and #54 in Case No. CV-N-00-437-ECR. Petitioner sought to
4 appeal, but was denied a certificate of appealability by both this Court and the Court of Appeals.
5 Docket #58 and #67 in Case No. CV-N-00-437-ECR.

6 In this case, petitioner petitions for a writ of habeas corpus, again challenging his
7 conviction and sentence in Case No. CR96-2580 in the Second Judicial District Court of the State of
8 Nevada.

9 28 U.S.C. §2244(b)(2) sets forth standards that must be met before a successive
10 habeas petition may be presented. 28 U.S.C. §2244(b)(3)(A) states: "Before a second or successive
11 application permitted by this section is filed in the district court, the applicant shall move in the
12 appropriate court of appeals for an order authorizing the district court to consider the application."
13 28 U.S.C. §2244(b)(3)(C) states: "The court of appeals may authorize the filing of a second or
14 successive application only if it determines that the application makes a prima facie showing that the
15 application satisfies the requirements of this subsection."

16 There is no indication in the habeas petition in this case, or elsewhere in any of the
17 documents petitioner has submitted, that he has applied to the Court of Appeals for an order allowing
18 the filing of this successive petition, or that the Court of Appeals has granted such an order. *See*
19 *Petition for Writ of Habeas Corpus (docket #5)*, p. 2, ¶6. Without such an order, the Court cannot
20 entertain petitioner's successive habeas petition. Therefore, respondents' motion to dismiss will be
21 granted, and this action will be dismissed.

22 The dismissal of this action is without prejudice to petitioner initiating a subsequent
23 habeas action, upon an order of the Ninth Circuit Court of Appeals authorizing him to do so. If
24 petitioner does so, he must submit a copy of the Court of Appeals' order, authorizing his successive
25 petition, with the habeas petition that he seeks to file in this Court.

1 **IT IS THEREFORE ORDERED** that respondents' Motion to Dismiss (docket #7)
2 is **GRANTED**.

3 **IT IS FURTHER ORDERED** that this action is **DISMISSED**.

4 **IT IS FURTHER ORDERED** that the Clerk shall **ENTER JUDGMENT**
5 **ACCORDINGLY**.

6 Dated this 25th day of March, 2008.



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9 _____
LARRY R. HICKS
UNITED STATES DISTRICT JUDGE